

## REMARKS

These remarks and the accompanying amendments are responsive to the Office Action dated April 18, 2008 (hereinafter referred to as the "Office Action"). At the time of the last examination, Claims 21-33 were pending, of which Claims 21, 22, 24, 26, 27, 28, 29, 31 and 32 are independent. The Office Action rejected Claims 21, 23-29 and 31, allowed Claims 22, 32 and 33, and objected to Claim 30.

Section 3 of the Office Action rejects Claims 21 and 23 under 35 U.S.C. 103(a) as being unpatentable over United States patent publication number 2004/0076125 applied for by Nakamura, et al. (the patent application publication hereinafter referred to simply as "Nakamura") in view of United States patent number 6,167,037 issued to Higuchi et al. (the patent hereinafter referred to simply as "Higuchi"). Section 4 of the Office Action rejects Claims 24, 25 and 29 under 35 U.S.C. 103(a) as being unpatentable over Nakamura in view of United States patent number 6,571,099 issued to Kim et al. (the patent hereinafter referred to simply as "Kim"). Section 5 of the Office Action rejects Claims 26-28 under 35 U.S.C. 103(a) as being unpatentable over United States patent number 6,466,628 issued to Kim (the patent hereinafter referred to simply as "Kim") in view Nakamura. Section 6 of the Office Action rejects Claim 31 under 35 U.S.C. 103(a) as being unpatentable over United States patent number 6,650,686 issued to Kondo (the patent hereinafter referred to simply as "Kondo") in view of United States patent number 6,167,037 issued to Higuchi et al. (the patent hereinafter referred to simply as "Higuchi").

We note that all rejections are based on combinations of references, each of which includes either Nakamura or Kondo. The applicants respectfully submit that these references are

improperly cited in the rejections. Accordingly, rejections that rely on either Nakamura or Kondo (i.e., all of the pending rejections) should be withdrawn.

It appears that the Examiner has cited the Nakamura reference as a 102(e) reference based on the filing date (April 17, 1998) of the International application on which the Nakamura reference is based. However, in the case of potential 102(e) art that is based on an International Application filed prior to November 29, 2000, it is not the International application date that is the relevant effective date for purposes of assessing whether the art is valid 102(e) art. Rather, it is the U.S. filing date of the potential 102(e) art that is to be used. For more information, please see MPEP 706.02 (f)(1). We direct the Examiner's attention particularly to MPEP 706.02(f)(1)I.(C)(3)(c), which is directly relevant for the case of Nakamura, being a United States patent publication that claims priority to an International application filed before November 29, 2000. As the Nakamura reference claims the benefit of an international application filed on April 17, 1998, the filing date of the Nakamura reference for the purpose of 102 (e) reference is the actual filing date of the U. S. application that claims the benefit of the international application, which is January 31, 2000. Clearly, January 31, 2000 is later than the priority dates of the present application (June 15, 1999 and August 16, 1999). Accordingly, the Nakamura reference is not a prior art reference to the present application under 35 U.S.C. 102(e).

Arguments regarding the Kondo reference has been advanced in the Amendment "D" filed on June 8, 2007. The U.S. filing date of the Kondo reference is July 27, 1999, which is predated by the filing date of one of the priority applications (Japanese Application 11-168899 (hereinafter referred to as '899 application)), based on which the present application claims right of priority. A certified English translation of the '899 application has been submitted on June 8, 2007. Language of claim 31 concerning the base station (which is the same as claim 26) is

described in claim 5 of the '899 application. Language of claim 31 concerning the mobile station (how the mobile station receives phase difference information) is described in paragraphs [0030]-[0032] of the specification of the '899 application.

Accordingly, the invention date of claim 31 is June 15, 1999 at the latest, which is before the U.S. filing date of the Kondo reference. Therefore, the rejections should be withdrawn in their entirety.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 17<sup>th</sup> day of July, 2008.

Respectfully submitted,

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